

LAWRENCE A. ORGAN (SBN 175503)
larry@civilrightsca.com

MARQUI HOOD (SBN 214718)
marqui@civilrightsca.com

CIMONE A. NUNLEY (SBN 326915)
cimone@civilrightsca.com

**CALIFORNIA CIVIL RIGHTS LAW
GROUP**

332 San Anselmo Avenue
San Anselmo, California 94960
Telephone: (415)-453-7352
Facsimile: (415)-785-7352

J. BERNARD ALEXANDER (SBN 128307)

ALEXANDER MORRISON + FEHR LLP

1900 Avenue of the Stars, Suite 900
Los Angeles, California 90067
Telephone: (310) 394-0888
Facsimile: (310) 394-0811

MICHAEL RUBIN (SBN 80618)

mrubin@altber.com

JONATHAN ROSENTHAL (SBN 329638)

jrosenthal@altber.com

ALTSHULER BERZON LLP

177 Post Street, Suite 300
San Francisco, California 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064

DUSTIN COLLIER (SBN 264766)

dcollier@collierlawsf.com

V. JOSHUA SOCKS (SBN 303443)

jsocks@collierlawsf.com

ELIZABETH R. MALAY (SBN 336745)

emalay@collierlawsf.co

DREW F. TETI (SBN 262641)

COLLIER LAW FIRM, LLP

240 Tamal Vista Blvd., Suite 100
Corte Madera, CA 94925
Telephone: (415) 767-0047
Facsimile: (415) 767-0087

Attorneys for Plaintiff OWEN DIAZ

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DEMETRIC DI-AZ, OWEN DIAZ, and
LAMAR PATTERSON,

Plaintiffs,

v.

TESLA, INC. dba TESLA MOTORS, INC.;
CITISTAFF SOLUTIONS, INC.; WEST
VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES, INC.;
and DOES 1-50, inclusive,

Defendants.

Case No. 3:17-cv-06748-WHO

**PLAINTIFF'S RESPONSE TO TESLA'S
EXCEPTIONS TO COURT'S
PRELIMINARY JURY INSTRUCTIONS**

1
2 The Court issued its Preliminary Jury Instructions on March 16, eight days ago. Near
3 midnight last night, without meeting and conferring and on the eve of trial, Tesla filed its
4 “Exceptions to the Court’s Preliminary Jury Instructions.” Dkt. 425. This filing is tardy,
5 meritless, redundant, and vexatious.

6 There is no basis for Tesla’s new filing. Tesla’s filing raises precisely the same
7 arguments it raised previously in its briefs, *see., e.g.*, Dkt. 389, and at the Pretrial Conference.
8 The Court already thoroughly considered and rejected these arguments, including in its “Order
9 on Motions In Limine, Michael Wheeler Testimony, and Punitive Damages,” Dkt. 417.
10 Accordingly, Plaintiff will not waste the Court’s time by again rebutting Tesla’s arguments on
11 their merits, since the Court has already done so, and since the Court’s analysis was both
12 thorough and correct.

13 Given that Tesla’s filing provides no basis for this Court to reconsider its earlier rulings,
14 it appears that Tesla’s motion is intended to further one or more of three alternative strategies—
15 none of which is proper.

16 *First*, the Court expressly found that it had *already* ruled that Tesla was judicially
17 estopped from seeking a retrial on liability, including liability for punitive damages, and that
18 Tesla continued to be judicially estopped from making that argument. Dkt. 417 at 9-10.
19 Tellingly, Tesla’s new filing completely ignores this aspect of the Court’s prior rulings, an
20 adequate, independent ground for the Court’s rejection of Tesla’s arguments. Tesla now asserts
21 that it is seeking to “make an appropriate record, and to preserve issues for appeal if necessary.”
22 Tesla Obj. at 1. But the time has long passed for Tesla to assert new objections or to propose new
23 instructions (other than in response to specific, unanticipated events at trial), and Tesla cannot
24 avoid the Court’s prior judicial-estoppel rulings by renewing the same objections and arguments
25 that the Court has previously rejected and ruled that Tesla was already estopped from pursuing.

26 *Second*, in several instances, Tesla’s purported effort to “make an appropriate record, and
27 to preserve issues for appeal if necessary” impermissibly rests upon a completely reversal of
28 Tesla’s prior position on the same issue. For example, Tesla now “objects” that the Court has not
included an instruction for nominal punitive damages, which Tesla claims (falsely) is “well

established.” Tesla Obj. at 7. But when Tesla submitted its initial draft Proposed Jury Instructions to the Court, *Tesla*’s proposed instructions did not include *any* request for a nominal punitive damages instruction. *See* Dkt. 374-2 at 3. While Tesla later reversed course and argued (unsuccessfully) that a nominal punitive damages instruction was proper, Tesla’s filing here seems intended in part to cover up its prior contradictory position.

Third, given that Tesla filed numerous meritless “objections” on the eve of trial, it appears that Tesla’s three midnight motions are simply abusive litigation tactics, designed to disrupt Plaintiff’s final trial preparation activities in the little time remaining before trial. The Court, like Plaintiffs, has better things to do with its time than spend the last day before trial revisiting issues that are now well-settled, after having been extensively briefed and comprehensively argued in previous weeks.

For these reasons and those already stated by the Court, the objections should be overruled.

Dated: March 24, 2023

**CALIFORNIA CIVIL RIGHTS LAW GROUP
ALEXANDER MORRISON + FEHR LLP
ALTSHULER BERZON LLP
COLLIER LAW FIRM, LLP**

/s/ Lawrence A. Organ

Lawrence A. Organ
Cimone A. Nunley
J. Bernard Alexander III
Michael Rubin
Jonathan Rosenthal
Dustin Collier
Attorneys for Plaintiff
OWEN DIAZ